

***United States Court of Appeals  
for the Second Circuit***



**BRIEF FOR  
APPELLANT**



76-1485

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee

vs.

pocket No. 76-1485

JUNE BUFFHAM,

Defendant-Appellant.

BRIEF FOR APPELLANT  
June Buffham

JERRY, ROSSI, TISDELL & MOORE  
Attorneys for Appellant  
June Buffham

Office and Post Office Address  
615 University Building  
Syracuse, New York 13202  
(315) 474-2981

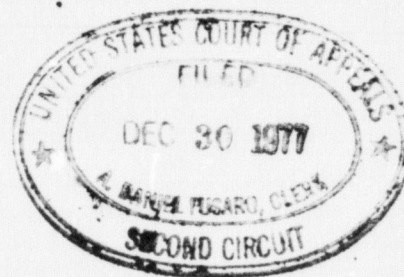


TABLE OF CONTENTS

	Page
TABLE OF CASES. . . . .	1
PRELIMINARY STATEMENT . . . . .	2
STATEMENT OF FACTS. . . . .	3
POINT I . . . . .	6
POINT II. . . . .	9
CONCLUSION. . . . .	9



TABLE OF CASES

1. U.S. v. BRANDT (196 F2 653 [2nd Cir. 1952])
2. U.S. v. CUEVAS (510 F2 848 [2nd Cir. 1975])
3. U.S. v. GRUNBERGER (431 F2 1062 [2nd Cir. 1970])
4. U.S. v. NAZZARO (472 F2 302 [2nd Cir. 1973])

PRELIMINARY STATEMENT

The Appellant, June A. Buffham, was charged in Indictment No. 75-CR-112 with the crimes of Conspiracy in violation of 18 U.S.C. 371 (Count I), Misapplication of Bank Funds in violation of 18 U.S.C. 656 (Count II), and Making False Entries in the Books of the Bank in violation of 18 U.S.C. 1005 (Count III). Co-defendant Frank J. Gallo was charged in the same Indictment with the crimes of Conspiracy to Misapply Bank Funds in violation of 18 U.S.C. 371 (Count I), the Aiding and Abetting of the Misapplication of Bank Funds in violation of 18 U.S.C. 2 (Count II), and the Aiding and Abetting of the False Entries in the Books of the Bank's Records in violation of 18 U.S.C. 2 (Count III). The case was set down for a jury trial in the United States District Court, Northern District of New York, at the Federal Building, Auburn, New York, on June 30, 1977, before the Honorable Floyd F. MacMahon, United States District Judge, Joseph Matthews, Esq., Assistant United States Attorney, represented the plaintiff, United States of America. June A. Buffham, Appellant, was represented by Robert L. Tisdell, Esq. Frank J. Gallo, defendant, was represented by Edward F. Gerber, Esq. On July 8, 1977, following a trial by jury, Frank J. Gallo was acquitted on all three counts in the Indictment. June A. Buffham was acquitted of the charge of Conspiracy to Misapply Bank Funds (Count I), and convicted of Misapplication of Bank Funds (Count II), and of Making False Entries in the Books of the Bank (Count III). The Court denied June A. Buffham's motion to set aside the verdict as to Counts II and III of the Indictment as against the weight of the evidence. Notice of Appeal was duly filed with the District Court. June A. Buffham now appeals her conviction on Counts II and III of the Indictment, alleging reversible error by the Court.



STATEMENT OF FACTS

The Government's Case

The Government offered its case against June Buffham through four witnesses: Robert Grudzinski, Alan Glassford, Robert Hunt, and Kenneth Van Graffiland.

Robert Grudzinski testified that he was a staff auditor employed by Lincoln First Bank-Central. He detailed the methods by which a bank manager might make illegitimate disbursement of bank funds and conceal that process. According to Mr. Grudzinski, approximately \$1,014,000.00 had been misappropriated from the bank by three methods: First, approximately \$315,000.00 had been disbursed in the form of commercial loans that were improperly documented (Record, p. 40, App. p.2 ). Second, a commercial loan for \$24,000.00 had been made on the basis of non-existent collateral (Record, p. 40, App. p.2 ). Finally, \$675,000.00 had been removed from the cash drawer of a head teller, and this deficiency had been accounted for only by a currency advance ticket to the Oswego County Savings Bank, when, in fact, that ticket was not redeemable at that bank.

The second Government witness was Alan Glassford. Mr. Glassford testified as to his continuing practice of borrowing from Lincoln Bank on the basis of false promises that he would be in a position to repay all loans. He further testified that Mr. Van Graffiland, Bank Manager at the Cato Branch of Lincoln Bank, had cooperated with Mr. Glassford's efforts. Specifically with respect to Mrs. Buffham (who was an employee of the bank at all times relevant to the proceedings), Mr. Glassford described an incident wherein Mrs. Buffham offered to purchase a car from him and advised him that unless he sold that car to her, she would inform authorities of his scheme (Record, p. 83, App. p.6 ). He also testified

that Mrs. Buffham delivered the amount of \$7,000.00 at a place outside the bank and that he had left messages with Mrs. Buffham with respect to additional money he needed (Record, p. 86, App. p.7 ).

The third witness called by the Government was Robert Hunt, an attorney with the law firm of Bond, Schoeneck & King, Syracuse, New York. Mr. Hunt testified with respect to a deposition that he had taken of Mr. Glassford. Mr. Hunt's testimony did not relate specifically to June Buffham (Record, pp. 223-226, App. pp. 15-18).

Kenneth Van Graffiland was the fourth witness called by the Government. He testified that he was a branch manager of Lincoln Bank who had loaned large sums of money to Alan Glassford without proper collateral or documentation. Mr. Van Graffiland also testified that he had advised Appellant, June Buffham, of the nature of his involvement with Mr. Glassford (Record, p. 255, App. p.22) and that on one occasion he sent June Buffham to deliver a check in the amount of \$7,000.00 to Mr. Glassford (Record, p. 264, App. p.27). He stated that he had directed June Buffham to update internal transfer accounts on two loans to Mr. Glassford and that Mrs. Buffham handled these accounts while Mr. Van Graffiland was on vacation (Record, pp. 264-265, App. pp.27-28). Finally he testified that he had given Mrs. Buffham currency advance slips to place in her teller drawer with respect to the \$615,000.00 that was allegedly redeemable at Oswego Bank.

#### The Appellant's Case

The Appellant called six witnesses in her defense.

The first three witnesses called on Mrs. Buffham's behalf were Ruth Woolridge, Arthur Elsworth, and Rhelda Stembien, all of whom testified as to Mrs. Buffham's good character (Record, pp. 772-774, 900-901, App.



pp. 36-40).

The fourth witness called on behalf of Mrs. Buffham was Janet Knapp who produced a photo copy of Lincoln Bank's profit sharing plan, which is not directly pertinent to this appeal.

The fifth witness called by Mrs. Buffham was Joyce Blum, a teller at Lincoln Bank who testified that she had worked under Mr. Van Graffiland and that it had been her experience that Mr. Van Graffiland gave strict orders which were to be obeyed without question. More specifically, Mrs. Blum stated that at times Mr. Van Graffiland would place documents in her teller's box without explanation and would in fact tell her not to bother him when she inquired as to their significance (Record, pp. 905-908, App. pp. 41-44).

Finally, Mrs. Buffham testified on her own behalf that she had been an employee of Lincoln Bank under the supervision of Mr. Van Graffiland. She testified that she followed his orders without question (Record, p. 919, App. p. 45) and that Mr. Van Graffiland had never told her of the nature of his relationship with Mr. Glassford (Record, p. 942, App. p. 47). She denied ever having had a conversation with Mr. Glassford to the effect that she would inform on him (Record, p. 935, App. p. 46 ), and she stated that she had never misapplied bank funds, made false entries or intended to defraud Lincoln Bank (Record, p. 954, App. p. 48 ). Finally, Mrs. Buffham asserted that she had never received money from Mr. Van Graffiland nor Mr. Glassford (Record, p. 954, App. p. 48 ).

POINT I

THE COURT'S PARTICIPATION IN THE PROSECUTION OF THIS CASE CONSTITUTED AN ABUSE OF DISCRETION WHICH RESULTED IN A DENIAL OF APPELLANT'S RIGHT TO A FAIR TRIAL.

Although it is clear that "the trial judge is more than a moderator and umpire, and has an active duty to see that any trial, including a criminal one, is fairly conducted and the issues clearly presented (US v. Cuevas, 510 F2 848 [2nd Cir. 1975]), it is respectfully submitted that in the instant case the Court exceeded these bounds. Initially, the Court instructed the U.S. Attorney on how to make his opening statement (Record, p. 26, App., p. 1). When the Government called its first witness, the Court instructed the U.S. Attorney to place into evidence a chart reflecting the processing of certain loans and then laid the foundation for the admission of that chart into evidence (Record, pp. 41-42, App., pp. 3-4). As the U.S. Attorney presented direct evidence through the examination of the Government's second witness, Alan Glassford, the Court repeatedly assisted the U.S. Attorney by asking foundational questions with respect to various conversations which had occurred between witnesses (Record, pp. 79, 83, 87, 203, App. pp. 5, 6-8, 14). Moreover on two occasions the Court conducted the direct examination of this witness, asking him approximately twenty questions (Record, pp. 93-94, 96-98, App. pp. 9-13). Similarly, the Court conducted the direct examination of the Government's fourth witness, Kenneth Van Graffiland, on eight occasions, asking approximately thirty-five questions (Record, pp. 233, 241-242, 255, 257-260, 275-276, 319, 321, 330-332, App. pp. 19-26, 29-39).

After the conclusion of the Government's case, the Appellant, June Buffham, testified on her own behalf. The Court interrupted the



U.S. Attorney's cross-examination of Mrs. Buffham, and conducted an extensive examination of its own. Specifically, the Court made repeated inquiries as to Mrs. Buffham's state of mind at the time that various activities critical to the charges in the indictment were carried on. In this connection the Court asked:

Q You did not record the loan on the books when made?

A When made; yes. (Record, p. 987, App. p. 50)

Q And in the normal course of business and improper procedures, they should have been made; did you know that?

A Yes. (Record, p. 987, App. p. 50)

Q So you knew that Van Graafeiland was concealing the fact of these loans from the bank officers, from his superior bank officers, from the auditors and from bank examiner; is that right?

A When the loan went on, yes. I didn't realize that this was what was happening. (Record, p. 988, App. p. 51)

Q You knew that you did not have any financial statements in your possession?

A I knew I did not have any, right. (Record, p. 990, App. 52)

Q Were there any such transactions in the rollover occasions, or were they pure shams?

A I did not feel that these were pure shams. (Record, p. 998, App. p. 54)

Moreover, on two occasions during its examination of Mrs. Buffham, the Court inquired as to whether she had withheld notes from the count (Record, p. 987, App. p. 50).

Appellant respectfully submits that the cumulative effect of the Court's participation in the Government's case was highly prejudicial to Appellant and in fact deprived Appellant of a fair trial. The extent of the Court's intervention might well have created an impression (however inaccurate that impression may have been) of the Court's partiality to the government's case, and it is this appearance of partiality that forms the

basis of Appellant's concern. In this connection it should be noted that it has specifically been stated that "a judge's participation during trial, whether it takes the form of interrogating witnesses, addressing counsel, or some other conduct, must never reach the point at which it appears clear to the jury that the Court believes the accused is guilty" (U.S. v. Nazzaro, 472 F2 302 [2nd Cir. 1973]). Similarly, in U.S. v. Grunberger, (431 F2 1062 [2nd Cir. 1970]), the Court noted that "a trial judge's responsibility to assist the jury in understanding evidence by asking questions to clarify testimony must not be so zealously pursued as to give the jury the impression of partisanship or the impression that the judge believes one version of evidence and disbelieves or doubts another." Nor was the prejudicial effect of the Court's participation in the Government's case blunted by the Court's admonition to the jury that it was not "supposed to conclude from any rulings that [the Court] had made throughout this trial or any questions that [the Court] has asked that [the Court] has any opinion one way or the other as to whether any defendant is guilty or not guilty of the charges made against him here" (Record, p. 1166, App. p.57). It is respectfully submitted that this instruction is simply inadequate to overcome the appearance of partiality that was created by the activity of the Court throughout the trial. It must be specifically noted in connection that it is well established in this circuit that "although in most circumstances a damaging impression may be mitigated by a jury instruction which emphasizes that comments or questions by Court are not to be construed as in any way expressing any opinion or view on the part of the court whatsoever, such admonitions may offset only brief or minor departures from strict judicial impartiality" (U.S. v. Brandt, 196 F2 653 [2nd Cir. 1952]). Although Appellant does not in any way suggest that there was in fact a departure from strict



judicial impartiality in this case, she does respectfully submit that there was an appearance of such a departure and that this appearance precluded the jury from making an objective decision as to her guilt or innocence.

#### POINT II

THE CONVICTION OF APPELLANT SHOULD BE REVERSED  
IN THE INTEREST OF JUSTICE.

The transcript of the trial clearly establishes that Appellant derived absolutely no benefit from the scheme that underlay the charges in the Indictment. Further, it shows that she had no motive to participate in that scheme and that she acted without guilty knowledge or intent. Accordingly, her conviction should be dismissed in the interest of justice.

#### CONCLUSION

Appellant respectfully requests that the convictions based upon the charges of Indictment No. 75-CR-112 be reversed.